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Forty-first session

SUMMARY RECORD OF THE 1045th MEETING

Held at Headquarters, New York,
on Monday, 1 April 1991, at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom (CCPR/C/58/Add.6, Add.11 and Add.12)

1. At the invitation of the Chairman, Mr. Halliday, Mr. Beamish and Mr. Stock (United Kingdom) took places at the Committee table.

2. The CHAIRMAN, welcoming the members of the delegation, thanked them for having supplied the Committee with written submissions incorporating recent developments, which would greatly facilitate discussion of the issues involved.

3. Mr. HALLIDAY (United Kingdom), introducing the third periodic report, said that the general approach adopted in compiling it had been to concentrate on developments that had occurred since the second periodic report. The report had been submitted in October 1989, and since then there had been a number of significant developments, some of which were covered in document CCPR/C/58/Add.12. Those developments included the Family Law Reform Act, 1987, which had dealt with illegitimacy; the Children Act, 1989, a comprehensive reform of the law relating to children which sought to promote and safeguard their welfare while protecting the rights of parents; the abolition of corporal punishment in State-maintained schools in Great Britain under the Education (No. 2) Act, 1986, and in Northern Ireland by an order in council; preparation to ratify the Convention on the Rights of the Child; the Police and Criminal Evidence Act, 1984, dealing with police powers, the rights of persons in police detention, police discipline and complaints against the police, along with codes of practice in connection with powers of search and seizure of property, detention, treatment, questioning and identification of persons, and tape recording of police interviews; the Security Service Act, 1989, setting out the functions of the service and establishing a commissioner and an independent tribunal to investigate complaints; replacement of section 2 of the Official Secrets Act, 1911, by the Official Secrets Act, 1989, conferring protection through the criminal law on a more limited class of official information; a statutory right to compensation, in accordance with article 14 (6) of the Covenant, through section 133 of the Criminal Justice Act, 1988; penalization of acts amounting to torture by the creation under the Criminal Justice Act, 1988, of a specific offence of torture based on the definition in the relevant United Nations convention; and the Fair Employment Act (Northern Ireland), 1989, which strengthened earlier laws designed to ensure equitable distribution of job opportunities between the Catholic and Protestant communities in Northern Ireland.

4. The Government of the United Kingdom had announced on 4 March 1991 the appointment of a Royal Commission to undertake a wide-ranging review, embracing all stages of the criminal justice process in England and Wales, to examine whether there were further ways in which the administration of justice could be improved in order to prevent the conviction of innocent people while also securing the conviction of the guilty. The Government, having published the report of an

(Mr. Halliday, United Kingdom)

independent inquiry into the prison system in England and Wales, had announced some significant measures that would take effect immediately and had undertaken to produce a full response in the form of a White Paper later in 1991.

5. The seriousness of the continuing threat of terrorism had meant that there was a regrettable, but continuing, need for exceptional measures to help to counter it. Among them was the power to detain suspects for up to seven days under the Prevention of Terrorism (Temporary Provisions) Act in respect of which the United Kingdom had decided in December 1988 that it was right to derogate under article 4 of the Covenant and under the European Convention on Human Rights.

6. Mr. BEAMISH (United Kingdom), noting the diversity of the dependent territories, said that inevitably the pace and completeness with which law, practice and capacity within them could be aligned with the norms of civil and political rights codified in the Covenant would also vary. The aim of the Government of the United Kingdom was to provide them with security, political stability and efficient, honest and representative government while taking full account of local customs and views. In the matter of self-determination, it was the policy of the Government of the United Kingdom not to seek to influence opinion in the dependent territories but to remain ready to respond positively when independence was the clearly and constitutionally expressed wish of the people.

7. As for constitutional development, a review had recently been completed of the Cayman Islands Constitution and, following a decision in 1986 temporarily to suspend it, ministerial government had been reinstated in the Turks and Caicos Islands in 1988 and the Islands' inhabitants were going to the polls on 3 April 1991 for the second time since 1986. On 28 March 1991, the Secretary of State for Foreign and Commonwealth Affairs had announced that, following local consultations, he would be submitting an order in council for royal approval to abolish the death penalty for murder, substituting life imprisonment, in the Cayman Islands, the Turks and Caicos Islands, the British Virgin Islands and Montserrat.

8. A survey undertaken by a senior judge in 1989 into prison installations in the British Virgin Islands, the Turks and Caicos Islands and Montserrat had recommended the building of prisons, better facilities for rehabilitation, and arrangements for community service as an alternative to custodial sentences. Those recommendations had been accepted, funds had been earmarked, sites had been chosen and construction work was expected to begin during 1991.

9. Many of the constitutions of the dependent territories included a justiciable Bill of Rights, and since the second periodic report a section on fundamental rights and freedoms had been included in the new Constitution of Montserrat.

10. Turning to the position of Hong Kong, which remained unique because of the arrangements for its future, he said that the Sino-British Joint Declaration of 1984 under which it would revert to the People's Republic of China on 1 July 1997 made specific provision for the Covenant as applied to Hong Kong to remain in force, and there would in due course be discussions between the Governments of the

(Mr. Beamish, United Kingdom)

United Kingdom and the People's Republic of China about the exact mechanism by which that provision would be implemented. The Basic Law for the future Hong Kong Special Administrative Region had been promulgated since the third periodic report was submitted, and it reproduced, in its article 39, the provision in the Joint Declaration that the Covenant should remain in force after 1997.

11. There had been a number of important developments in the situation in Hong Kong with regard to human rights since the first periodic report was submitted. The first was the introduction into Hong Kong's legislature of a bill of rights which when enacted made justiciable in Hong Kong courts the rights and freedoms contained in the Covenant as applied to Hong Kong. The bill when enacted would be a significant contribution to the enhancement of civil and political rights in Hong Kong. It was also the intention of the Government of the United Kingdom to seek an amendment to the Letters Patent - Hong Kong's primary constitutional document - to ensure that no future legislature which derived its competence from them could validly enact any law that was inconsistent with the Covenant. Since the bill was introduced, a special ad hoc group of the Legislative Council had been holding detailed discussions with the Hong Kong Government on its content, and it was expected that the bill would become law by the summer of 1991.

12. There had been considerable changes in recent years in the development of representative government in Hong Kong. On 16 February 1990 the Secretary of State for Foreign and Commonwealth Affairs had announced that the Hong Kong Government would be making arrangements to introduce 18 directly elected seats into the Hong Kong legislature in 1991. The increase, above the 10 directly elected seats envisaged in 1988, reflected a widely held view in the Hong Kong community that the pace of political development should be more rapid, and would mean that in 1991 there would for the first time be a majority of elected members in the legislature. Preparations for direct elections in the autumn of 1991 were under way, and people in Hong Kong were being encouraged to take an active part, whether as voters or as candidates.

13. Hong Kong had a very good record as a port of first asylum for Vietnamese migrants, and continued to deal with the problem in a humane way pending a satisfactory international solution. Because Hong Kong dealt fairly with arrivals of Vietnamese boat people, it had attracted more asylum seekers than other such ports in the region; since 1975 some 185,000 Vietnamese asylum seekers had arrived in Hong Kong. Currently, there were some 52,000 Vietnamese in Hong Kong: 8,000 had been given refugee status and permission to remain pending resettlement overseas; 15,000 had been determined not to be refugees and were awaiting repatriation; and 29,000 were waiting to have their status determined. In the period between 1979/80 and 1990/91, the Hong Kong administration had spent some $US 450 million on the overall care of Vietnamese migrants, and the cost of the refugee status determination process was estimated to be $US 9.6 million. More than 2,000 government employees were engaged in tasks related to the care of asylum seekers. Hong Kong continued to work closely with the United Nations High Commissioner for Refugees (UNHCR), and a number of changes had been made following

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consultation with the UNHCR to streamline and improve status determination procedures; the Hong Kong administration accepted decisions where the UNHCR declared a person to be a refugee even though that person had been screened out as a non-refugee.

Constitutional and legal framework within which the Covenant is implemented (art. 2 (2) and (3) of the Covenant) (sect. II of the list of issues)

14. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of the United Kingdom, namely: (a) in view of the period of time that had elapsed since ratification of the Covenant, whether it was intended to review reservations thereto and to withdraw some or all of them; (b) whether consideration was being given to incorporating the Covenant into the domestic law of the United Kingdom and the dependent Territories; (c) whether further consideration had been given to ratifying the Optional Protocol to the Covenant, especially in view of the fact that the inhabitants of the dependent Territories could not resort to regional procedures for the protection of human rights of a similar character; (d) whether the 1990 Hong Kong Bill of Rights had supremacy over other laws; (e) whether in the view of the Government of the United Kingdom the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China adopted by the National People's Congress on 4 April 1990, especially its articles 18 (4), 39 and 158, corresponded to the Joint Declaration of 1984 and to the United Kingdom's intention to secure application of the Covenant in the future Administrative Region, whether the Government of the United Kingdom planned to discuss possible inconsistencies between the Basic Law and the Covenant with the Government of the People's Republic of China before the Joint Declaration was fully implemented, and what arrangements were contemplated for ensuring that reporting obligations relating to Hong Kong would be met after 1997; and (f) experience with the operations of Hong Kong's Commissioner for Administrative Complaints.

15. Mr. HALLIDAY (United Kingdom), referring to section I (a), (b) and (c) of the list of issues, said that the reservations were kept under constant review, and with one exception would all be retained. The reservation in respect of article 25 (c) concerning the Isle of Man would be withdrawn since women residents there were now eligible for jury service. The position of the Government of the United Kingdom with respect to incorporation of the Covenant into domestic law remained unchanged, and as the report made clear there were no plans for such legislation; the position with respect to the dependent Territories had been dealt with in the opening statement of Mr. Beamish. The Government of the United Kingdom had no current plans to become a party to the Optional Protocol to the Covenant, but the inhabitants of most of the dependent Territories could resort to the same regional procedures for the protection of human rights as were available to inhabitants of the United Kingdom.

16. Mr. BEAMISH (United Kingdom), dealing with section I (e) of the list of issues, said that the Government of the United Kingdom had satisfied itself that the Basic Law was on the whole consistent with the basic principles enshrined in the Joint Declaration and corresponded with its intention to secure the continued

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application of the Covenant beyond 1997. Article 39 of the Basic Law provided that the Covenant should remain in force and should be implemented through the laws of Hong Kong. In respect of article 18 (4) of the Basic Law, it was to be noted that relevant national laws might be applied only in a state of war and when turmoil endangered national unity or security, and even then only when such turmoil was beyond the control of the Government of the Special Administrative Region. The Government of the United Kingdom saw no inconsistency between that and article 4 of the Covenant, but wished to emphasize that in the Joint Declaration the Governments of the United Kingdom and the People's Republic of China had undertaken that the Covenant's provisions would remain in force in Hong Kong; article 39 of the Basic Law gave effect to that undertaking. Regarding article 158, it would be for the Hong Kong courts to interpret the Basic Law for all matters in respect of which Hong Kong would have autonomy. Article 158 was compatible with and gave effect to those provisions in the Joint Declaration, which stated that except for foreign and defence affairs Hong Kong should be invested with independent judicial power, including that of final adjudication.

17. Mr. STOCK (United Kingdom) said, with reference to section I (d) of the list of issues, that the draft Bill of Rights, which was still being debated but was expected to be enacted before summer by the Hong Kong Legislative Council, contained two key provisions that gave the Covenant supremacy over other Hong Kong laws. Article 3 (2) provided that all pre-existing legislation that did not admit of a construction consistent with the Bill of Rights was, to the extent of the inconsistency, repealed. That provision merely articulated a normal rule of construction in British law regarding the repeal or amendment of earlier by later legislation. Article 4 of the draft Bill of Rights provided that all legislation enacted subsequently should, to the extent that it admitted of such a construction, be construed as being subject to the Bill of Rights. Again, that reflected an existing rule of British construction, particularly in so far as the courts were required to interpret domestic legislation consistently with an international obligation. The status of the Bill of Rights, once adopted, would be no different from that of any other ordinance in Hong Kong, which meant that it could be amended and repealed.

18. It was also planned to amend the Letters Patent, which were the source of legislative power in Hong Kong and its main constitutional document, to prohibit the enactment of any law that restricted rights and freedoms in a manner inconsistent with the Covenant. The application of the Letters Patent to Hong Kong would, of course, fall away on 1 July 1997; but the Basic Law promulgated by China would replace the Letters Patent as Hong Kong's constitutional document, and article 39 of the Basic Law was the mirror of the amendment to the Letters Patent just described and would give effect to the Covenant in Hong Kong law.

19. With reference to section I (f) of the list of issues, he observed that the Office of the Commissioner for Administrative Complaints had been operating effectively from 1 March 1989 to 20 March 1991, during which period 372 complaints had been received; 59 of them were still under investigation, and 204 had been investigated, 23 of which had been found substantiated, 82 partially substantiated,

(Mr. Stock, United Kingdom)

and 99 unsubstantiated. In his second annual report to the Hong Kong legislature for the period ending 30 June 1990, the Commissioner had reported that departments against which complaints had been made had been helpful, and had acted to remedy procedural defects or correct errors highlighted by the investigation of the complaints even prior to the reports on the investigations. Thus far, there had been no report of non-compliance with the Commissioner's recommendations. The remedies recommended had varied. They ranged from a review of procedures or decisions to payments to complainants to the proffering of an apology or to undertakings to avoid similar errors in the future. In his report - copies of which were available to the members of the Committee - the Commissioner addressed the popular misconception that his office had little authority and maintained that his substantial powers were comparable to those of an ombudsman in civil-law countries. He could obtain relevant documents, examine government officials and persons under oath, and impose fines for failure to appear or to furnish documents. The Government could not refuse documents or other evidence on the ground that it would be against the public interest, except in the limited cases where the Governor or Chief Secretary certified that there should not be disclosure. It had recently been decided, moreover, to extend the Commissioner's jurisdiction to previous government departments which had now become autonomous bodies. The Commissioner concluded in his report that the current referral system by which only those complaints referred to him by legislators could be investigated was fairly narrow and did in fact discourage complaints. In 1991 there would for the first time be 18 directly elected members of the Hong Kong Legislative Council responsible for geographical constituencies, which should provide easier access to legislators. The United Kingdom would monitor the referral system, and was in any case committed to a review of it in 1992.

20. Ms. CHANET, thanking the United Kingdom delegation for a very interesting and in-depth report and for the useful oral enumeration of subsequent legislation, said, with reference to section I (b) of the list of issues, that it was her understanding that many in the United Kingdom were urging the incorporation of the Covenant into the domestic law of the land. Noting that many laws had been passed and practices altered in response to judicial decisions against the United Kingdom in the European Court of Human Rights (para. 5 of report CCPR/C/58/Add.6), she asked whether it would not be preferable to avoid such piecemeal, a posteriori legislation. The United Kingdom was the country most often condemned by the European Court, not because of its human rights record but simply because it lacked human rights legislation and its citizens could bring complaints only to an international tribunal. It was true that legislation was not a panacea and that common law could protect human rights. Common-law rules, however, rarely reflected perfectly the corresponding provisions of the Covenant. Also, United Kingdom legislation was often not generally applicable throughout the realm, as indicated in paragraph 75 of report CCPR/C/58/Add.6. She therefore believed that the United Kingdom should rethink its position on the matter, in the interest of greater juridical security.

21. With reference to section I (a) of the list of issues, the delegation had indicated that the United Kingdom intended to keep its very long list of

(Ms. Chanet)

reservations to the Covenant, many of them giving the Covenant only a distributive applicability by declaring various provisions inapplicable in the case of certain dependent Territories. In that context, she would like clarification of the legal reasoning behind the reservation to article 1 of the Covenant, by which the United Kingdom obligations under Articles 1, 2 and 73 of the United Nations Charter took precedence over the Covenant. Did that mean that the United Kingdom reserved the exclusive right to raise the issue of self-determination in all cases, and that no Non-Self-Governing Territory could request self-determination; and was that why the people of Hong Kong had not been invited to express their wishes concerning their own future at the time of the Joint Declaration?

22. The Committee had been told that the draft Bill of Rights incorporated the Covenant in the legislation of Hong Kong and gave it priority over other legislation, and also that the Basic Law was compatible with the Joint Declaration. She herself still had doubts regarding article 18 (4) of the Basic Law, which was particularly vague. She wondered what sanctions would apply if one of the parties to the Joint Declaration failed to respect the agreement after 1997. She found no specific denunciation clause in the Joint Declaration, in which case the standard rules of treaty law would apply. She asked whether the United Kingdom felt that such rules would suffice or whether it planned to conclude a supplementary agreement with the Government of Hong Kong to ensure the implementation of the Joint Declaration and, especially, of the Covenant.

23. Mr. LALLAH, referring to section I (b) of the list of issues, expressed unhappiness at the continuing failure of the United Kingdom, in the fifteenth year since its ratification of the Covenant, to take the great step forward and give the Covenant, with its guaranteed rights and remedies, the force of law as such in the United Kingdom. He saw paragraphs 1 to 10 of report CCPR/C/58/Add.6 as a kind of apology for the situation, but remained unconvinced by the arguments put forward.

24. If common law was an expression of the national ethos, he failed to understand why it would not take into account the modern ethos governing human rights. Common law could, after all, be amended. Traditionally. common law was not the only part of the law that guaranteed human rights or had been resorted to for that purpose. Other bills of rights had on various occasions up to 1689 been enacted, and one would have thought that the need was apparent for other such legislation incorporating the developments in intervening centuries.

25. It was his impression that British lawmaking was geared more to limitations than to enactment of rights. It had been maintained that all rights under the Covenant were recognized either in common law or in the various British statutes. Yet in one of the latest cases to have gone to the House of Lords - the ex parte Brind case - the Law Lords had not considered it relevant to take into account article 10 of the European Convention on Human Rights (the replica of art. 10 of the Covenant) for the purpose of deciding the scope of the rights involved and of the limitations which had been brought to those rights by executive action under legislative authority. More broadly, the prison riots in the country the previous year and the reports of prison conditions were closely related to obligations under

(Mr. Lallah)

articles 9 and 10 of the Covenant, especially where remedies were concerned, and surely the rioters, to whom common law had been applied, would have been justified in entering an action in court under the Covenant on the grounds of inhuman or degrading conditions. If the United Kingdom had had a bill of rights, surely the long detainment of Iraqis and Palestinians could, under article 4 of the Covenant, have been a basis for court challenge, just as the recent cases involving invasion of privacy could have been challenged under article 21 of the Covenant. Remedies would unquestionably have been available if the right not only to impart but to seek information, guaranteed under article 19 of the Covenant but currently denied by laws such as the Official Secrets Act or the Contempt of Court Act, had been statutorily recognized. The same applied to the many rights under article 26 of the Covenant, for the violation of which there was no remedy under the law.

26. It would seem that the evolution of common law had not kept pace with the evolution of the national and the international ethos in the protection of human rights. Since, under the British system, Parliament was sovereign in the making and breaking of laws, it should be nationally acceptable to have Parliament write a human rights code of conduct into its national legislation. Some indigenous method should be devised for writing the basic provisions of the Covenant, together with all possible limitations, into a law which all could see. Common law was hard to see, even for judges. Parliament could agree to state that any legislation inconsistent with that law would be void to the extent of the inconsistency, and that any limitations not punishable would not be legislated for or, if legislated for, would be justiciable.

27. Furthermore, the argument that care must be taken not to propel judges into the political arena (para. 8 of report CCPR/C/58/Add.6) was not valid in terms of human rights, since the United Kingdom had, after all, taken a political decision in ratifying the Covenant in the first place, thus making it a standard for the country's judiciary as well as its executive and legislature. In a number of new Commonwealth constitutions, the United Kingdom had not hesitated to give such power to the judges. He himself knew it from personal experience, and the judges of the Privy Council also knew it when they were called upon to interpret what had been described as "broad propositions" (para. 7 of report CCPR/C/58/Add.6). The provisions of the Covenant were not large statements of vague principle at all, and could perfectly well be interpreted at the highest judicial level. There was no reason that the United Kingdom could not give itself the guaranteed fundamental rights it had been instrumental in giving to other countries. He also agreed with Ms. Chanet that the British judiciary should not be deprived of the opportunity to define the law but made to wait for other international courts to pronounce on the rightness or wrongness of decisions.

28. He had a few concerns regarding the situation in Hong Kong. Mr. Stock had used the phrase "construction of statutes", which he took to mean that if pre-1977 and post-1997 laws were inconsistent, they would be void to the extent of the inconsistency. That would not in itself be strange, as most constitutions of the new Commonwealth contained such a provision, stating that the constitution was the supreme law.

(Mr. Lallah)

29. Clauses 3 and 4 of the Bill of Rights could be amended, and the Letters Patent could also be nullified after 1997. He wondered whether it would be prudent to include in the Bill a clause binding Parliament to ensure that no provision of the Bill of Rights could be amended except by a weighted majority, and that that clause itself could not be amended except by a weighted majority. There was no way of knowing what the future held, but all precautions should be taken when drafting laws. He was also unhappy with the provision of a waiting period, to give the Government some time to ensure that laws were made consistent with the Bill of Rights. Such a waiting period was surely unnecessary, as it would be an inordinate task to amend all the existing laws and make them consistent with a particular bill.

30. Turning to paragraph 13 of the report CCPR/58/Add.6, he noted that the reports and the summary records were to be made widely available. He wished to know how that was to be done and whether they would be available also in the dependent territories. It did not seem feasible to consider the Report of the United Kingdom and that on the dependent territories together, and he believed they should have been submitted separately.

31. Mr. AL-SHAFEI said that while there had sometimes been differences between Britain and the populations of its former colonies, on the whole the march of such countries towards independence and self-determination had gone forward smoothly. He too felt that it would have been preferable for the Report on the United Kingdom to be distinct from that on the dependent territories.

32. In the light of recent developments, he felt there was a need to concentrate on the Hong Kong situation, as it affected fundamental rights and freedoms. Neither the Bill of Rights nor the Basic Law established a procedure for periodic reporting of the human rights situation in Hong Kong to be continued after 1997. There was thus no assurance that the monitoring role of the Committee could be maintained after 1997, which would be essential if the Covenant was to stay applicable to Hong Kong, as had been pledged by both parties to the Sino-British Joint Declaration.

33. It was possible that China might accede to the Covenant before 1997, but on the assumption that that would not be the case, he asked whether that question had come up in the negotiations between Britain and China. He wished to know, further, how the United Kingdom intended to honour the commitments it had made in the Joint Declaration.

34. He had noted the delegation's reply to section I (c) of the list of issues, namely that the ratification of the Optional Protocol to the Covenant was still under review, and that the people in the dependent territories would be able to resort to some regional procedure. He felt that the ratification of the Optional Protocol would be the most concrete demonstration of the commitment of the United Kingdom to the continuing protection of the rights and freedoms enshrined in the Covenant.

(Mr. Al-Shafei)

35. Turning to article 20 of the Basic Law, he asked for information on the history of the drafting of the article and on its scope of application. He asked whether it was conceivable that, under that article, greater powers might be given to the legislative or the executive. His next concern was with the revision of existing laws in Hong Kong. Under article 2 of the Covenant, each State party undertook to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant. That raised the issue of reviewing existing legislation to ensure that it was compatible with the Covenant. Article 8 of the Basic Law ensured that laws previously in force in Hong Kong would be maintained except for any that contravened the Basic Law itself. The draft Bill of Rights went further, stating that all pre-existing legislation that did not admit of a construction consistent with the bill of rights itself would be repealed to the extent of the inconsistency.

36. The current review of the legislation raised several issues: whether there had been any review of the laws passed in Hong Kong after 1976, the date of Britain's accession to the Covenant; whether the Bill of Rights once adopted, would be entrenched in the Constitution or would have equivalent status to any other law; and whether there was any guarantee that the proposed one-year freeze scheduled to follow the adoption of the draft Bill of Rights would not be extended.

37. The addendum to the third periodic report (CCPR/C/58/Add.1) stated in its paragraph 20 that there would be a review of existing laws, particularly those enacted before the Covenant became applicable to Hong Kong; yet, some contentious laws had been enacted since that date: on freedom of expression; on film censorship, and on television and telecommunications, for example. With regard to the Law Reform Commission referred to in paragraphs 22 and 23 of that addendum, he wished to know the composition and status of the Commission, the results of its work, whether its recommendations had a bearing on government decisions, and how long it took the Commission to review a law.

38. Mr. ANDO said that the United Kingdom was the only member of the Security Council which still regarded the International Court of Justice as having compulsory jurisdiction. This demonstrated the United Kingdom's respect for the rule of law, not only in the domestic arena but in the international community as well. The Committee was obliged to look at Britain's human rights situation in the light of that record. That was not to suggest that it, like every other country, did not have problems in the human rights area. The entire Committee was aware of the tragic situation in Northern Ireland, but democracy relied on reason, and when a segment of the population behaved unreasonably it became very difficult to safeguard human rights. He also pointed out that the report on the dependent territories had been submitted at the request of the Committee itself. He associated himself with the questions posed by Ms. Chanet and Mr. Lallah on incorporation and reservation, and with Mr. El Shafei's question regarding the monitoring mechanism which would be in place in Hong Kong after 1997. He drew the Committee's attention to article 151 of the Basic Law, and asked whether consideration had been given to making use of its provisions to enable Hong Kong to become a party to the Covenant directly.

39. Mr. AGUILAR said that the first 10 paragraphs of the United Kingdom's third periodic report (CCPR/C/58/Add.6) seemed to contain a list of excuses for not implementing, or implementing with considerable restrictions, the provisions of the International Covenant on Civil and Political Rights. The way in which common law was applied in the United Kingdom gave rise to concern. Particularly disheartening was the question of a bill of rights. As Mr. Lallah had observed, British legislation embodied a series of norms which tended to limit rights rather than promote them. The United Kingdom was the country which was most often denounced by the European Court of Human Rights. Perhaps that was due to the fact that the British juridical system took less account of international human rights standards.

40. In paragraph 2 of its report, the United Kingdom stated that the rights and freedoms recognized in other countries' constitutions were protected by it and by Parliament unless they were removed or restricted by statute. For example, the Prevention of Terrorism (Temporary Provisions) Act 1984, which abrogated a number of human rights, had been reconfirmed several times. He hoped that the rights guaranteed under the Covenant would one day be incorporated into the British system.

41. Mr. Beamish had said that, in accordance with article 158 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the responsibility for interpreting the Basic Law rested with the Court of Final Appeal of the region. However, the first paragraph of that article stated that the power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress. The Committee had also been told that the Basic Law was in complete consonance with the Joint Declaration of the Government of the United Kingdom with the Government of the People's Republic of China on the question of Hong Kong. However, there were a number of differences between the Joint Declaration and the Basic Law which must be taken into account. Mr. Stock had said that the rights guaranteed in the Covenant would be "entrenched" in the Hong Kong Constitution and would be in force until 1 July 1997; on that day, the Covenant would cease to apply and the Basic Law would come into effect.

42. Referring to the first paragraph of article 39 of the Basic Law, he said that the phrase "as applied to Hong Kong" could mean as applied when the Basic Law had been adopted by the People's Republic of China. In the Spanish version of that text, that would imply that reference was being made to all the laws which remained in force until 4 April 1990 and that the Hong Kong Bill of Rights not be applicable after 1997. If, in the Spanish version, the phrase tal como se aplican was replaced by tal como se apliquen, the sense of the phrase would be "as applied to Hong Kong" when the Basic Law of the Hong Kong Special Administrative Region entered into force. He wished to know whether that way of interpreting the phrase had been considered by the Joint Committee and, if so, what was the decision reached. According to the Joint Declaration, it appeared that the Covenant, including its article 40, would be implemented in toto after 1997, and he wished to know what guarantees existed that the Covenant would be applied to Hong Kong as of 1 July 1987.

43. Mr. MYULLERSON said that he associated himself with his colleagues who had expressed concern regarding the future of Hong Kong. With respect to section I (c) of the list of issues, he wished to know how the Committee would be able to monitor Hong Kong's implementation of the Covenant after 1997, and he inquired whether that matter had been brought up in the United Kingdom's talks with China.

44. The Committee was aware that the Covenant was not directly applicable in the United Kingdom. However, most of the substantive norms contained in the Covenant were norms which had become generally accepted norms of customary international law. He noted that the United Nations Commission on Human Rights applied such norms to States which were not parties to the International Covenants on Human Rights. Since the customary international law was considered to be part of the law of the land in the United Kingdom, he wished to know whether any attempt had been made to apply the norms contained in the Covenant as norms of customary international law.

45. Mr. MAVROMMATIS said that the inclusion of so many territories in the consideration of a single report was not in keeping with the equality of treatment which should be given to all reports. The Committee should therefore consider the report of the United Kingdom separately, and the reports on its dependent territories should be taken up at another time. In particular, the Committee was not doing justice to the consideration of the question of Hong Kong. With regard to section I (b) of the list of issues, he endorsed the views of Ms. Chanet and Mr. Lallah. He believed that, in the Birmingham Six case, the presumption of innocence had been eclipsed. With respect to section I (a), he was pleased that the United Kingdom had withdrawn some of its reservations to the Covenant. If the United Kingdom withdrew its reservations to the application of the Covenant in Hong Kong, he suggested that the phrase "as applied to Hong Kong" should be replaced by "with respect to Hong Kong".

46. With respect to section I (c), the United Kingdom had indicated that the courts of the dependent territories could resort to European courts. It was indeed unusual to require countries from one part of the world to apply to the courts in another part, and he wished to know the reason for such a procedure. In that regard, the United Kingdom should consider ratifying the Optional Protocol.

47. Since, after 1997, there would be no way for the Committee to monitor the human rights situation in Hong Kong, a specific agreement on the subject should be concluded between the United Kingdom and the People's Republic of China in order to ensure that the provisions of the Covenant would continue to apply. In cases where the people of Hong Kong wished to introduce amendments to the Covenant, weighted voting should be used.

48. The CHAIRMAN recalled that the Committee had requested the United Kingdom to submit a joint report on the United Kingdom and its dependent territories and that it had agreed to consider the report as a whole. It was not possible to consider individual parts of the United Kingdom's report separately; perhaps that procedure could be followed in future.

49. Mr. FODOR commended the United Kingdom's statement regarding the paramount importance of legal remedies in guaranteeing freedoms. However, he did not believe that there was any contradiction between the position of the Government of the United Kingdom as summed up in paragraph 2 of its third periodic report (CCPR/C/58/Add.6) and the concept of a written constitution. Even if the general principles of rights and liberties were proclaimed in written form in a State, adequate guarantees and strong legal remedies would be available. Another important aspect was citizens' awareness of their rights and the precise content and dimension of such rights. In that regard, a written constitution or a comprehensive bill of rights could play a crucial role without adversely affecting guarantees and legal remedies.

50. Although similar legal principles were applicable throughout the entire country, some parts of the United Kingdom, such as Scotland and Northern Ireland, had legal systems which differed from the English system. Accordingly, some laws were not applicable in all parts of the country. At the same time, certain provisions of some laws on the same matters were different in England and Wales and in Northern Ireland and Scotland, respectively. He wished to know whether the State party intended to establish a homogeneous system of laws throughout the country and what kind of difficulties, other than those related to tradition, might arise in the process of unifying the British legal system.

51. Mr. SADI said he hoped that the United Kingdom would hasten to remove its reservation to the Covenant and consider ratifying the Optional Protocol. The fact that the United Kingdom had not seen fit to ratify the Optional Protocol and incorporate the provisions of the Covenant into its laws was not in keeping with the United Kingdom's reputation as a leader among nations. Bearing in mind that the United Kingdom was influenced by the legal opinion of the European Court of Human Rights, he wondered what account it took of the Committee's observations.

52. Commenting on section I (c) of the list of issues, Mr. Beamish had remarked that the dependent territories could resort to regional procedures for the protection of their human rights. He wished to know what regional procedure was available to Hong Kong. Hong Kong was the only dependent territory to be deprived of its rights under articles 1 and 2 of the Covenant. Although the time was short, he hoped that the United Kingdom would not leave Hong Kong with that legacy.

53. It had been stated that the Basic Law was "on the whole" consistent with the Covenant. However, the Covenant did not require general consistency but rather specific, total and unequivocal observance of its provisions. Even if the Basic Law regarding Hong Kong could be amended to reflect faithfully the provisions of the Covenant, it would be difficult for the Committee to monitor Hong Kong's commitment to the Covenant. Unless a mechanism could be found which allowed Hong Kong to accede to the Covenant, Hong Kong's reporting obligations would not be ensured.

The meeting rose at 1 p.m.